IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.23379 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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M/s. COLOSPERSE CHEMICALS CORPORATION - Petitioner(s)
Versus
UNION OF INDIA THRO' SECRETARY & 2 - Respondent(s)

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Appearance :
MR PR NANAVATI for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
MRS VASAVDATTA BHATT for Respondent(s) : 3,
MR MM TIRMIZI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 21/01/2006

ORAL ORDER

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition challenges impugned order dated 18th May, 2005 (Annexure-I) suspending various DEPB licenses as

mentioned in the annexure to the said order. Heard Mr.P.R.Nanavati , learned advocate for the petitioner, Mr.Malkan for respondent No.2, and Mrs.Vasavdatta Bhatt for respondent Nos.1 and 3.

2. Rule. Learned Counsel for the respondents respectively waive service.

3. It is an admitted position between the parties that the facts are similar to the facts of Special Civil Application No.22980 of 2005 which has been heard and disposed of by an order of even date by this Court.

4. As can be seen respondent No.2 had issued show cause notice dated 15th/17th September, 2004 granting an opportunity of hearing on 27th September, 2004 and 15th October, 2004. However, the petitioner had not been able to avail of opportunity as the partner of the petitioner-firm was detained under COFEPOSA on the day the hearing was granted. This fact is accepted in the following words in Paragraph No.7 of the affidavit-in-reply of respondent No.2.

> *"8. The DEPB has been suspended only after issuing show cause notices. Of course, show cause notices issued to the petitioner have been received back with the postal endorsement as 'not found'. However, the petitioner has never cared to inquire with the office of the Respondent No.2, though his DEPB was suspended. Under the circumstances the DEPB has been rightly cancelled pursuant to the*

investigation report of the DRI".

5. In light of the aforesaid averments it is apparent that respondent No.2 also agrees to the fact that the petitioner has not been heard before passing the impugned order. It is not necessary to take into consideration as to which side is at fault. Respondent No.2 has stated that the petitioner ought to have taken care to inquire with the office of respondent No.2, but it can be said for the other side that the respondent authority ought to have taken care, in the first instance, to ensure that the notice of hearing i.e. Show Cause Notice had duly been served on the petitioner. Issuance of a show cause notice is not an idle formality. Nor can mere issuance of notice be equated with service. A show cause notice as the description indicates, is for showing cause as to why the proposed action should not be taken, i.e. to elicit a response. In absence of service there can be no response/reply. No hearing.

6. In the circumstances, on the basis of the admitted facts the petition has to be allowed on the short ground of violation of principles of natural justice, the impugned order having been made without hearing the petitioner.

7. Accordingly, impugned order dated 18th May, 2005

(Annexure-I) is quashed and set aside and the parties are directed to proceed from the stage of Show Cause Notice dated 15th/17th September, 2004. The petitioner is directed to appear before respondent No.2 authority on 3rd February, 2006 and thereafter the matter shall be proceeded with on a day which is convenient to both the sides.

8. Considering the period that has elapsed, it would be fair and just, in the event the petitioner ultimately succeeds, to direct respondent No.2-authority to validate the DEPB licence for the balance period from the date the petitioner was deprived of the use. It is necessary to make it explicit that the Court has restrained itself from entering into the merits of the dispute despite submissions made on merits by the learned Counsel for the parties.

9. The petition is allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**